

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH  
AND  
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.10 of 2018  
and  
C.M.P.No.110 of 2018

Royal Sundaram Alliance Insurance  
Company, Office working at  
Sundaram Towers, 45 & 46,  
Whites Road, Chennai - 14. ... Appellant/2<sup>nd</sup> Respondent

Vs.

1.K.Rukmani ... 1<sup>st</sup> Respondent/claimant  
2.S.Viswanath ... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988  
against the decree and judgment dated 11.01.2017 made in  
M.C.O.P.No.953 of 2010 on the file of the Motor Accidents Claims  
Tribunal (Sub Court), Dharapuram.

For Appellant : Mr.Elveera Ravindran

For Respondents : Mr.P.Shanmuga Sundaram for R1  
R2 - given up

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

The appellant is the insurer of the second respondent, who is the owner of the vehicle, which is a tempo traveller bearing Regn. No.KA 10 3097. On 20.09.2008, when the deceased was riding the motorcycle bearing Regn. No.TN 37 AR 5014, the vehicle owned by the second respondent dashed against the two wheeler driven by the deceased, resulting in the fatal injury. A case has been registered in Crime No.293 of 2008 for the offence punishable under Sections 279, 338 and 304 A IPC. The driver of the vehicle was acquitted by the jurisdictional court.

2.The first respondent laid a claim for Rs.30 lakhs. The income of the deceased was sought to be fixed at Rs.25,000/- per month. The deceased was aged about 23 years apart from being unmarried. The Tribunal fixed the negligence on the part of the driver of the vehicle owned by the second respondent and fixed the total compensation at Rs.25,57,000/-, after making 50% deduction towards the personal expenses of the deceased. Challenging the award passed both on quantum and negligence, the present appeal has been filed.

3.Learned counsel appearing for the appellant, placing reliance upon Exs.P1 and P5 coupled with the evidence of R.W.2 submitted that the deceased was responsible for the accident. In any case, the Tribunal ought to have fixed contributory negligence on his part. On the question of quantum, it is submitted that higher percentage has been taken for future prospects.

4.Learned counsel appearing for the first respondent/claimant submitted that the Tribunal has fixed only a sum of Rs.25,57,000/-, after making 50% deduction towards the personal expenses of the deceased. Though certain amount has been given, little bit higher with respect to future prospects and loss of love and affection, 50% deduction has been made as against 1/3rd, especially when the first respondent was the widowed mother of the deceased. The Tribunal took into consideration the evidence of P.W.2 as against R.W.2. R.W.2 is the interested witness whereas P.W.2 is an independent witness. Thus, the appeal will have to be dismissed.

5.We do not find any merit in this appeal. On the question of negligence, the Tribunal was right in considering the evidence of P.W.2, who is an independent witnesses said to have seen the occurrence. R.W.2 is obviously is an interested witness when compared to the evidence of P.W.2. Reliance made on Exs.R1 and R2 and Exs.P1 to P5 cannot be countenanced for the reason that at best they could only be taken pieces of evidence. There is no sanctity in law that can be given to an F.I.R. and final report filed along with sketch by elevating them to substantive. Thus, we do not find any error in the award passed by the Tribunal with respect to the negligence. Even on the question of quantum also, we are not inclined to interfere with the award passed, though slightly higher amount is fixed for the head loss of love and affection as well as taking higher percentage towards future prospects. The Tribunal has deducted 50% towards personal expenses of the deceased. When it is the admitted case of the parties that the claimant/first respondent is the widowed mother of the deceased, as per the decision rendered by the Apex Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009 ACJ 1298), it should have been

only 1/3. We find that the compensation fixed is thus very reasonable and does not warrant any interference.

6. In such view of the matter, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. The appellant insurance company is directed to deposit the compensation amount awarded by the Tribunal along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.953 of 2010 on the file of the Motor Accidents Claims Tribunal (Sub Court), Dharapuram, within a period of eight weeks from the date of receipt of a copy of the judgment.

8. We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

mmi

To

The Motor Accidents Claims Tribunal,  
Sub Court, Dharapuram.

+1cc to Mr.Elveera Ravindran, Advocate SR.No.1035871

+1cc to Mr.P.Shanmuga Sundaram, Advocate SR.No.103485

C.M.A.No. 10 of 2018

CP(CO)  
GMY(22/07/2020)

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